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In re Patent No. 6,264,854 :  
Issued: July 24, 2001 : REQUEST FOR INFORMATION  
Application No.: 09/546,361 :  
Filing Date: April 10, 2000 :  
Attorney Docket No. **P-5534-18** :

This is a request for information in response to the petition under 37 CFR 1.378(b), filed February 2, 2012, to reinstate the above-cited patent.

The Request for Information mailed March 12, 2012, is **VACATED**.

Petitioner is allowed a non-extendable period for reply of **TWO (2) MONTHS** from the mailing date of this communication to provide a response. The response should be titled, "Response to Request for Information." If no response is provided within the period set forth, a decision will be made solely on the merits as set forth in the petition under 37 CFR 1.378(b) filed February 2, 2012. No additional fees are due.

The patent issued July 24, 2001. The 7.5 year maintenance fee could have been paid from July 24, 2008, through January 24, 2009, or with a surcharge, as authorized by 37 CFR 1.20(h), during the period from January 25, 2009, to July 24, 2009. Petitioner did not do so. Accordingly, the patent expired at midnight on July 24, 2009.

Petitioner is required to address the following points:

- A successful petition under 37 CFR 1.378(b) must affirmatively identify the cause of the delay in paying the maintenance fee and provide a statement from every person with **first-hand knowledge** of the circumstances surrounding the delay in paying the maintenance fee. Petitioner must provide statements from **any person** who may have been charged with paying the maintenance fee and statements from **any person with first-hand knowledge of the circumstances surrounding the failure to pay the maintenance fee**. This would include a statement from Ms. Joan Simmons, who petitioner states is the paralegal charged with managing the maintenance fee payments and docket entries associated with the subject patent. Additionally, petitioner should provide a statement from Claude Hayes explaining when and how he discovered the patent was expired.

- 37 CFR 1.378(b)(3) sets forth that a petition submitted under this portion of the Code of Federal Regulations must include a showing which is described as follows:

A showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

Petitioner must, therefore, describe the steps that were in place to ensure that the maintenance fee was timely paid. This showing would include an explanation of who was responsible for paying tracking and paying the maintenance fee and the method this person, or entity, used for tracking the maintenance fee.

- Section 711.03(c)(2) of the Manual of Patent Examining Procedure, provides, in pertinent part that:

In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." *Smith v. Mossinghoff*, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." *Haines v. Quigg*, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

A delay resulting from an error (e.g., a docketing error) on the part of an employee in the performance of a clerical function may provide the basis for a showing of "unavoidable" delay, provided it is shown that:

- (A) the error was the cause of the delay at issue;
- (B) there was in place a business routine for performing the clerical function that could reasonably be relied upon to avoid errors in its performance; and
- (C) the employee was sufficiently trained and experienced with regard to the function and routine for its performance that reliance upon such employee represented the exercise of due care.

A delay resulting from an error, such a docketing error, on the part of an employee in the performance of a clerical function may provide the basis for a showing of unavoidable delay. Such a showing should identify the specific error, the individual who made the error, and the business routine in place for performing the action which resulted in the error. The showing must establish that the individual who erred was sufficiently trained and experienced with regard to the function and routine for its performance that reliance upon such employee represented the exercise of due care. The showing should include information regarding the training provided to the personnel responsible for the docketing error, degree of supervision of their work, examples of other work functions carried out, and checks on the described work which were used to assure proper execution of assigned task. The showing should include a statement from the supervisor of the clerical employee.

- Relative to the docketing system used by McCarter & English, LLP (Computer Packages, Inc.) please provide:

- 1) Additional information regarding the docketing system used by McCarter & English, LLP and its use in the industry and why it is a reliable system.
- 2) Additional information regarding the data required to be entered into the docketing system for each patent.
- 3) Additional information relative to any cross checks in the docketing system that are engineered to compensate for data entry errors, such as the error alleged in the petition.

Further correspondence with respect to this matter should be addressed as follows:

By mail:                      Commissioner for Patent  
                                    Mail Stop Petitions  
                                    Box 1450  
                                    Alexandria, VA 22313-1460

By facsimile:              (571) 273-8300  
                                    Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3222.

**/Kenya A. McLaughlin/**

Kenya A. McLaughlin  
Petition Attorney  
Office of Petitions